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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/808,211

03/24/2004

Albert N. Santilli

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EXAMINER

BROWN, MICHAEL A

ART UNIT

PAPER NUMBER

3772

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

02/12/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/808,211

Applicant(s)

SANTILLI ET AL.

Examiner

Michael Brown

Art Unit

3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 24-28 is/are allowed.
- 6) ☒ Claim(s) 1-7 and 19-23 is/are rejected.
- 7) ☒ Claim(s) 8-18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 3-5 are U.S.C. 102(b) as being anticipated by Newman.

Newman discloses in figures 1-7 a surgical drape comprising a first closed container (11, 12), having a portion 13, that can be selectively opened to form first opening (fig. 4, the opening at the top of the container), the container is sized and shaped so a person can be placed atop the container, a first sheet 30, the first container is made of a fluid impervious material ((polyethylene and polyolefin) and the drape includes a pull tab (any edge of the drape can be pulled like a tab).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Newman in view of Mixon.

Newman discloses in figures 1-5, a surgical drape, substantially as claimed. However, Newman doesn't disclose the drape being liquid impermeable. Mixon teaches in col. 3, lines 45-56, a surgical drape made of a liquid impermeable material. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the drape disclosed by Newman could be fabricated of a liquid impermeable material as taught by Mixon in order to prevent liquid from passing through the drape during a surgical procedure.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Newman in view of Alpern.

Newman discloses in figures 1-5 a surgical drape, substantially as claimed. However, Newman doesn't disclose the selectively openable portion of the container being defined by scores. Alpern teaches in figure 4, col. 4, lines 40-45 a container having selectively openable portions defined by scores (col. 4, lines 40-45). It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the scores as taught by Alpern could be incorporated into the portion of the container that is selectively openable in order to use the score to open and remove the drape.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Newman in view of Kraus.

Newman discloses in figures 1-5 a surgical drape, substantially as claimed. However, Newman doesn't disclose an adhesive on the outer surface of the container or a removable protective layer disposed over the adhesive. Kraus teaches in figures 1-

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4 a container comprising an adhesive 20 and a removable protective layer (12, 14): It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the adhesive and the protective layer as taught by Kraus could be incorporated into the container disclosed by Newman in order to use the adhesive to hold the container closed until the drape is to be removed and used in a surgical procedure. The protective layer could be used to protect the adhesive.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Newman in view of Winters.

Newman discloses in figures 1-5 a surgical drape, substantially as claimed. However, Newman doesn't disclose a layer of adhesive about the periphery of the sheet. Winters teaches in figure 1 a surgical drape comprising adhesive about the periphery of the drape (col. 5, lines 15-20). It would have been obvious to one having ordinary skill in the art at the time that the invention was made that sheet disclosed by Newman could have adhesive about its periphery as taught by Winters in order to use the adhesive to attach the drape to the patient.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Newman in view of Rothrum.

Newman discloses in figures 1-5 a surgical drape, substantially as claimed. However, Newman doesn't disclose a pouch container having a large opening at a first end, and a small selectively openable opening at the second end and adhesive adjacent the large end. Rothrum teaches in figures 1-4 a surgical drape comprising a pouch 28, having a large opening on one end (fig. 1a), a small selectively openable opening (at

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26), at a second smaller end and an adhesive 72 adjacent the large end. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the pouch as taught by Rothrum could be attached to the drape disclosed by Newman in order to use the pouch to collect body fluids during a surgical procedure.

The adhesive could be used to attach the pouch to the drape.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Newman in view of Mixon, along with Esposito.

Newman discloses in figures 1-5, a surgical drape, substantially as claimed. However, Newman doesn't disclose the drape being liquid impermeable. Mixon teaches in col. 3, lines 45-56, a surgical drape made of a liquid impermeable material. Esposito teaches in figure 7 a container 10, having an adhesive layer 58 on its outer surface. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the drape disclosed by Newman could be fabricated of a liquid impermeable material as taught by Mixon in order to prevent liquid from passing through the drape during a surgical procedure. The adhesive as taught by Esposito could be placed on the outer surface of the container disclosed by Newman in order to hold the container in place.

***Allowable Subject Matter***

Claims 8-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 24-28 allowed.

### ***Response to Arguments***

Applicant's arguments filed November 8, 2006 have been fully considered but they are not persuasive. Applicant argues that none the prior art cited teaches or suggest the pull the surgical drape out from under the patient feature of the present invention. However, whether the prior art suggests or teaches pulling a drape from under a patient isn't patentable. Simply stated any surgical drape is capable of being inserted under a patient and layer pulled from underneath the patient. Claims 1-27 are product/article claims, that the prior art only as to be capable of performing any function performed using the present invention. As state above, and in particular to Newman, this reference is capable of being pulled from underneath a patient. Applicant argues that with respect to figures 6-7 in Newman, the patient can't be placed a top the package 10 because the package must be bent back upon itself in order for the drape 30 to be removed therefrom through the window 14. However, whether the patient can or can't be placed a top the package doesn't provide any novelty over the prior art. Again a patient can be set a top the package 10 before the package is opened or after it is opened. Applicant argues that manipulation of the package would be impossible if the patient previously had been placed top of the package. However, this function could be looked at from a perspective of the size of the patient. If the patient is a female that is a size 0 than she could be placed top the package and the package could be moved while she is on top of the package. Once again the prior art would be capable of performing the same function as the present invention. Applicant argues that Newman is removed completely form the package. In contrast, the present invention requires the

second end of the first sheet remain in the container. Again Newman is capable of allowing the second end of the drape to remain inside the package after the first end has been removed. Applicant argues that Newman doesn't disclose a pull tab. The words pull tab are so broad that any corner on a surgical drape can be broadly interpreted as a pull tab. The corner on the drape can be pulled to remove the drape. Thus, allowing the corner to be interpreted as a pull tab. Applicant argues that Newman doesn't disclose a sheet for protecting portions of a patient during pre-operation preparations. However, any drape is capable of performing protecting portions of a patient during pre-operation preparation. Applicant argues that Newman doesn't disclose a drape that conforms to the shape of a selective portion of the patient nor the drape having a second end that is attachable to a second drape. However, the drape disclosed by Newman is capable of conforming to any body portion. Also the second end of the drape can be attached to another drape. Applicant argues that Newman can't be severed from another drape. However, Newman is capable of being severed from another drape that could be adhesively attached to the Newman drape. Applicant argues that there is no motivation to combine Newman and Mixon. However, Newman was used to set forth the environment of the drape and Mixon was used as a modifier to form the drape of a liquid impermeable material. However, claim 19 only requires one surgical drape that is attached to a second drape. The second drape is not positively claimed. Applicant argues that Winters doesn't disclose an adhesive around the periphery of the drape that allow it to be attach to a patient. However, Winters discloses an adhesive layer that permits the drape to be attached to a patient. The examiner



interpreted the adhesive layer as being an adhesive layer around the periphery of the drape. The adhesive layer was interpreted as being used to attach the drape to a patient.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is 571-272-4972. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

M. Brown  
February 1, 2207

A handwritten signature in black ink, appearing to read "Michael A. Brown". The signature is fluid and cursive, with the first name "Michael" being the most prominent part.

MICHAEL A. BROWN  
PRIMARY EXAMINER